



**THE ATTORNEY GENERAL  
OF TEXAS**

September 27, 1990

**JIM MATTOX  
ATTORNEY GENERAL**

Honorable Bob McFarland  
Vice-Chairman  
Criminal Justice Committee  
Texas State Senate  
P. O. Box 12068  
Austin, Texas 78711

LO-90-65

Dear Senator McFarland:

Chapter 321 of the Tax Code, the Municipal Sales and Use Tax Act, authorizes a municipality to adopt or repeal a sales and use tax at an election in which a majority of the qualified voters of the municipality so approve. Tax Code § 321.101(a). Subsection (b) of section 321.101 of the code permits a municipality to adopt an additional sales and use tax for the purpose of effecting a reduction in local ad valorem taxes. See Attorney General Opinion JM-659 (1987). However, a municipality may not adopt the additional tax if, inter alia, the municipality is "included within the boundaries" of a regional transportation authority created pursuant to article 1118y, V.T.C.S., by a principal city having a population of less than 800,000. Tax Code § 321.101(b)(2).

You inform us that, pursuant to article 1118y, Fort Worth, a city having a population of less than 800,000, initiated the process of creating a regional transportation authority whose boundaries included all of Tarrant County. If the governing body of any city located within the boundaries of a proposed authority fails by resolution to confirm its participation in the authority within 60 days after the process has been initiated, the creating entity and the confirming entities may proceed on their own without the participation of the nonconfirming entities. V.T.C.S. art. 1118y, § 4(e). You inform us that the City of Arlington took no action to confirm its participation in the transportation authority.

You ask whether the City of Arlington is "included within the boundaries" of the regional transportation authority for purposes of section 321.101(b) of the Tax Code and is thereby prohibited from adopting the additional sales and use tax. We assume that your concern arises from the fact that the City of Arlington is located entirely within


Tarrant County and might therefore be thought to be "included within the boundaries" of the authority.

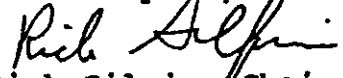
Article 1118y sets forth a detailed, multi-step procedure whereby a regional transportation authority may be created. At initiation of and at several steps during the process of creating an authority, cities located within the authority's proposed boundaries or their voters have an opportunity either to confirm initial or continuing participation in the authority. Those cities or their voters that fail to confirm either initial or continuing participation are dropped from inclusion and the remaining entities are empowered to proceed on their own. See V.T.C.S. art. 1118y, §§ 4, 9. Absent the municipality's participation in and inclusion within the actual boundaries of the authority, the authority may not tax that municipality's residents. Id. at § 9(1).

We conclude that a municipality is "included within the boundaries" of a regional transportation authority for purposes of section 321.101 of the Tax Code if that municipality actually participates in and is therefore located within the actual boundaries of the authority. If a municipality does not actually participate, then it is not prohibited from imposing the additional sales and use tax authorized by subsection (b) of section 321.101 of the Tax Code.

Thus, under the facts as you have presented them, by the very terms of the act, the City of Arlington does not participate in the authority and is not located within the actual boundaries of the authority. Nor may its residents be subjected to the sales and use tax imposed by the authority. It is not prohibited from imposing the additional tax pursuant to section 321.101(b) of the Tax Code.

Very truly yours,

  
Sarah Woelk, Chief  
Letter Opinion Section

  
Rick Gilpin, Chairman  
Opinion Committee

Prepared by: Jim Moellinger

APPROVED: OPINION COMMITTEE

SW/RG/JM/mc

Ref.: RQ-1959

ID# 9108